IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2229 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MANJIBHAI SIDIBHAI HARIJAN (SINCE EXPIRED,CASE IS ABATED) & 3 - Opponent(s)

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Appearance :
Ms.Hansa Punani, learned APP for Appellant(s) : 1,
None for Opponent(s) : 1,
MR TUSHAR L SHETH for Opponent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/03/2006

ORAL JUDGMENT

(Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. This appeal under Section 378 of the Code of Criminal Procedure (for short “the Cr.P.C.”) has been filed by the appellant State of Gujarat, being aggrieved by the judgment and order dated 14.7.2004 passed by the learned Fast Track Judge, Gondal in Sessions Case No.22/96 whereby the respondents original accused have been acquitted of the offences punishable under sections 498A, 306 and 114 of the Indian Penal Code (for short “the IPC”). Since the accused No.1, who is arraigned as respondent No.1 in the present appeal, had expired the case against him has abated.

2. Briefly stated, the case of the prosecution, as culled out from the material on record, is that on 25.5.1995 the complainant Kalubhai Govindbhai, father of the deceased Labhuben, lodged a F.I.R. at Jetpur Taluka Police Station stating therein that the

marriage of the deceased Labhuben had taken place nine years prior to the incident, with one Savji, son of Manji Sidi. After the marriage both were staying in a joint family with the accused persons i.e. A1- father in law,A2- brother in law, A3 – Sister in law and A4 mother in law of the deceased. As per the case of the prosecution there was some dispute with regard to the amount of compensation claimed in an Accident Claim Petition, which arose out of the death of the son of the deceased in an accident and for that reason the accused persons were harassing the deceased, physically and mentally, and also on trivial matters like household work. The accused had also beaten up the deceased and driven her out of the house and even earlier, the complaint regarding the same was lodged at the Jetpur Taluka Police Station. The deceased had stayed for about one and half years in her parental house, being annoyed at the treatment meted out to her by the accused persons. Thereafter, a compromise was arrived at between the deceased and the accused and the deceased was again sent to her matrimonial house. Thereafter, the accidental death

of Anil, the son of the deceased, took place and the insurance amount regarding the same was likely to be withdrawn and in that regard, the accused again started to quarrel with the deceased. Being fed up of the mental and physical torture inflicted upon her by the accused, the deceased consumed some poisonous tablets which are used to preserve wheat, on 25.5.1995. The complainant was informed by the husband of the deceased regarding the incident and had immediately gone to the clinic with his wife and son, where he found that his daughter Labhuben had died.

3. F.I.R. in this connection has been lodged on the same day i.e. on 25.5.1995 at 21.45 P.M., which was registered vide C.R.No.158/95 in Jetpur Police Station against the accused for commission of the offences punishable under Sections 498A, 306 and 114 of the IPC.

4. During the course of the investigation, inquest was held on the dead body of the deceased Labhuben, which was sent for autopsy, panchanama of the scene

of offence was also prepared, statements of the witnesses were recored. At the end of the investigation, as sufficient incriminating evidence was found against the accused, they came to be charge-sheeted before the learned J.M.F.C., Jetpur. As the offence punishable under Section 306 of the IPC is exclusively triable by the Court of Sessions, the learned J.M.F.C., Jetpur committed the case to the Court of Sessions, Rajkot, which was registered as Sessions Case No.22/96.

5. The learned Additional Sessions Judge, to whom the case was made over for trial, framed necessary charge against the accused, which was read over and explained to them. The accused pleaded not guilty to the charge and claimed to be tried and,therefore, put to trial in Sessions Case No.22/96.

6. In order to prove the charge levelled against the accused, prosecution has examined following witnesses and relied upon their oral testimony.

(i) P.W.1 Dr.Indravadan Manikant Joshi (Medical Officer, Civil Hospital, Jetpur- Doctor who performed the post mortem) Exh.26.

(ii) P.W.2 Babubhai Maganbhai (Panch) Exh.33.

(iii) P.W.3 Valiben Kalubhai(mother of the deceased) Exh.36.

(iv) P.W.4 Kaliben Dhansukhlal (wife of the brother of the deceased) Exh.38.

(v) P.W.5 Mansukhbhai Kalubhai (brother of the deceased)Exh.39.

(vi) P.W.6 Samjibhai Kalubhai (brother of the deceased) Exh.40.

(vii) P.W.7 Balvantsinh Dhirubhai Sarvaiya (PSI – Investigating Officer) Ex.42.

(viii) P.W.8 Balubhai Jethabhai Garchar (Dy.S.P., Investigating Officer) Exh.43.

(ix) P.W.9, Ibrahimbhai Hajibhai Dela (PSO)Exh.49.

To prove the case against the accused, prosecution has also produced following documents and relied upon the contents of the same.

(i) Inquest Panchnama – Ex.27

(ii) Dying Declaration – Ex.28

(iii) P.M.Note – Ex.29

(iv) F.S.L. Report – Ex.30

(v) Letter / Yadi regarding viscera – Ex.31

(vi) Letter/ Yadi regarding handing over of viscera – Ex.32

(vii) Panchnama of scene of offence – Ex.34

(viii) Panchnama regarding seizure of Muddamal – Ex.35

(ix) Copy of extract of Station Diary – Ex.43

(x) Order of Investigation/ Inquiry – Ex.44

(xi) Order of Investigation/ Inquiry – Ex.45

(xii) List containing witnesses' statements – Ex.47

7. After the recording of the evidence of the prosecution witnesses was over, the learned trial judge explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements under Section 313 of the Cr.P.C. In the further statements they denied the case of the

prosecution in toto.

8. At the end of the trial, on appreciation, evaluation, analysis and scrutiny of the evidence on record, the learned trial judge came to the conclusion that the prosecution has been able to establish that the deceased Labhuben died by consuming aluminum phosphate tablets, which are used to preserve wheat. But, whether the deceased consumed the phosphate tablets with the intention to commit suicide or by accident has not been proved by any material on record. However,the prosecution has failed to prove beyond reasonable doubt, that the accused had instigated and abetted the deceased to commit suicide and that the deceased was subjected to physical and mental cruelty at the hands of the accused prior to the incident, which led her to commit suicide. On this finding, the learned trial Judge acquitted the accused of the offences with which they were charged, which has given rise to the present appeal.

9. We have considered the submissions and also

undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record, which is read and re-read by Ms.Hansa Punani, learned APP, with reference to broad and reasonable probabilities of the case.

10. Regarding the fact that the deceased Labhuben died after consuming poisonous tablets of aluminum phosphate, it has come in the evidence of P.W.1 Dr. Indravadan Manikant Joshi, Medical Officer, Civil Hospital, Jetpur, whose testimony is at Exh.26 and who performed the post mortem on the body of the deceased, that it is possible that the deceased may have consumed tablets by accident and it is also possible that she may have done so in order to commit suicide. However, the Doctor has stated that the deceased Labhuben died due to the consuming of the poisonous tablets. The post mortem note has been prepared by P.W.1, which is at Exh.29. On a conjoint reading of the oral testimony of P.W.1 Dr. Indravadan Manikant Joshi and the post mortem note, there is no manner of doubt that the deceased died due to aluminum phosphate poisoning. Therefore, on

the basis of this evidence it has to be held that the death of the deceased was an unnatural one. However, looking to the oral testimony of P.W.1 a doubt is raised whether the deceased consumed the poisonous tablets accidentally or with a specific intention to commit suicide.

11. Having held that the deceased Labhuben died an unnatural death by consuming phosphate tablets, the only question that falls for the determination of this Court is as to whether the deceased was subjected to mental and physical cruelty at the hands of the accused, to such a degree that it led her to take the extreme step of committing suicide, as per the case of the prosecution.

12. To prove the case of the prosecution, reliance has been placed on the testimony of P.W.3 Valiben Kalubhai, mother of the deceased, which is at Exh.36. P.W.3 has stated that the son of her deceased daughter Labhuben met with an accident and a case was filed for compensation and the accused were quarreling with the deceased in order to take away

the amount of the compensation money, which fact was disclosed by the deceased. She has further stated that prior to this when the deceased was expecting her son Anil, she has stayed at her parental house for about one year,being annoyed with the behaviour of the accused towards her. After this a compromise was arrived at and the deceased was sent to her parental house. On another occasion the deceased had stayed at her parental house for about 2 years, on being harassed and tortured by the accused to bring dowry. Thereafter, a compromise was effected between the parties. The accused used to harass the deceased on account of dowry and the amount of compensation money to be received from the Accident Claim Petition regarding the death of her son Anil. Apart from this, there was no other cause for harassing the deceased. P.W.3 has further stated that she does not know whether any money has been received by way of compensation or not.

12.1 In her cross examination P.W.3 has stated that the accused have not made any direct or indirect demand for dowry after the marriage of Labhuben and

further that she does not know anything regarding the compensation money for the death of the son of the deceased. In her cross-examination P.W.3 has also stated that her daughter was residing separately from her in-laws after 5 to 7 years of marriage. There are material contradictions and improvements in the testimony of this witness, which have been noticed by the learned trial Judge.

13. The prosecution has also examined Kaliben Dhansukhlal,wife of the brother of the deceased, as P.W.4, whose testimony is at Exh.38. In her examination-in-chief P.W.4 has stated that the deceased had not stated anything about the harassment to her. She has also stated that she did not know about the dispute regarding the claim amount. Her testimony is, therefore, of no support to the case of the prosecution.

14. Another witness examined by the prosecution is P.W.5 Mansukhbhai Kalubhai, brother of the deceased, whose testimony is at Exh.39. In his examination-in-chief P.W.5 has stated that there was physical

harassment to his sister by accused due to some personal dispute between his sister (deceased) and her husband. He has stated that he is not aware of the claim case and did not know whether the dispute was with regard to the claim amount. He has also clearly stated that the story of harassment to the deceased Labhuben, narrated by him in his statement before the police, was made at the behest of his mother P.W.3. Therefore, the case of the prosecution derives no help or support from the testimony of this witness.

15. Further the prosecution has examined P.W.6 Shamjibhai Kalubhai,brother of the deceased, whose testimony is at Exh.40. He has stated in his examination-in-chief that there was physical and mental harassment to the deceased regarding bringing some articles. However, in his cross examination he has admitted that since about the last five years before the alleged incident, his sister, the deceased Labhuben and her husband were residing separately. He has stated that there was some dispute going on with regard to the claim amount but, he did not know

whether that amount had been paid or not. He has stated that the dispute was not for taking the claim amount but, he has later on stated that he believes that harassment was for the claim amount. This witness had also not proved to be consistent or trustworthy. Therefore, his evidence is not of any help to the prosecution.

16. The prosecution has examined the Investigating Officer Balvantsinh Dhirubha Sarvaiya at P.W.7, whose testimony is at Exh.42. In his cross-examination he has stated that he did not investigate anything about the claim Petition but stated that he demanded the same from the parties but they have not produced anything.

17. A scrutiny of the oral evidence produced by the prosecution shows that there are material improvements and contradictions in the deposition of Valiben, mother of the deceased (P.W.3). Further the brother and sister-in-law of the deceased have not supported the case of the prosecution. Evidence regarding the bone of contention i.e. the dispute

regarding the amount of compensation arising out of the Claim Petition filed for the death of the son of the deceased, is inconsistent and vague and, therefore not worthy of credence.

18. On re-appraisal of the entire evidence, according to us, nothing incriminating is found against the accused which would connect them with the alleged crime. No incident regarding physical or mental cruelty has been clearly stated by any of the prosecution witnesses which took place prior to or on the day of the incident and which could have abetted or induced the deceased to commit suicide.

19. On a conjoint reading of testimony of PW.3,4,5 and 6 it emerges that the span of married life of the deceased person was 9 years. Therefore, the question of presumption under Section 113 would not arise. The deceased person was residing separately from the in-laws for past 5 to 7 years. No specific demand of dowry has been proved and no specific incident has been narrated by any of the witnesses as to the amount of demand, the article of demand or the place

and time when it was demanded. Further the allegations of harassment to the deceased by the accused are of a general nature. Even the reason for the so called harassment and torture i.e. the compensation amount regarding the death of the son of the deceased has not been borne out consistently from the testimony of other prosecution witnesses. No specific incident or evidence has been narrated by any of the prosecution witnesses, which would lend credence to the allegation of cruelty and physical and mental torture at the hands of the accused to the deceased.

20. There is not an iota of evidence, leave alone any reliable or trustworthy evidence, to the effect that there was any act of cruelty, either physical or mental, committed upon the deceased, which could have led her or instigated her to commit suicide. Neither is there any evidence on record that there was any demand for dowry. The alleged harassment, which has been referred to by the prosecution witnesses, does not appear to be of an incessant, persistent and unbearable nature, which could have

led the deceased to take the extreme step of consuming poisonous tablets. As such, the oral and documentary evidence on record is not sufficient to attract the provisions of Sections 498A and 306 of the IPC.

21. It is a settled proposition of law that for bringing home the charge under Sections 498A and 306 of IPC, there must be some evidence adduced on record showing that soon before the incident there was some harassment and torture to the deceased at the hands of the accused. Section 107 of IPC is with regard to the abetment and as per the provisions of this Section, there must be some evidence that soon before the incident there must be some incident due to which she was prompted, instigated or abetted to commit suicide. In the instant case, no such evidence is forthcoming. Therefore, there is no evidence adduced on record showing that soon before the incident any other incident took place due to

which she was instigated or abetted to commit suicide.

22. In the case of Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh, 2002 AIR SCW 2035 (SC) the Supreme Court has held that accused telling deceased 'to go and die' that itself would not constitute ingredient of 'instigation'. Presence of mens rea is necessary concomitant of instigation. The fact that deceased committed suicide after two days of quarrel during which the said words were uttered by accused would show that suicide was not direct result of quarrel and, therefore, the Supreme Court has held that that the charge-sheet framed under Section 306 of IPC against the accused was liable to be quashed as ingredients of abetment were totally absent.

23. In the case of Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 (SC) the Supreme Court has held that there must be a reasonable

certainty to incite the consequence. Merely because accused is found guilty under Section 498-A he should not necessarily be held to be guilty under section 306 of IPC on the basis of the same evidence.

24. Applying the principles laid down by the Supreme Court in the above referred to two judgments to the facts of the present case, there is no direct evidence as to what type of physical and mental cruelty was meted out by the accused to deceased Labhuben as well as what abetment or instigation was given by the accused to deceased Labhuben to commit suicide. In fact, even the premise that the deceased committed suicide is doubtful, keeping in view the testimony of P.W.1, the Doctor, who says that the poisonous tablets could have been consumed accidentally.

25. In view of the aforesaid state of affairs, the prosecution has failed to prove the

charge levelled against the accused with regard to the physical and mental cruelty meted out to the deceased Labhuben by the accused and hence instigation and abetment made by the accused to deceased Labhuben to commit suicide is not proved.

26. In view of the unsatisfactory evidence led by the prosecution, we are of the considered opinion that no illegality is committed by the learned trial Judge in acquitting the accused of the offences with which they were charged and we are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the learned trial Judge, as, in our view, no other conclusion is possible except the one reached by the learned trial Judge.

27. It is a cardinal principle of criminal jurisprudence that in an acquittal

appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

28. In the case of RAM KUMAR V. STATE OF HARYANA, reported in AIR 1995 SC 280, Supreme Court has held as under:

> "The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as

> extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."

29. It may be noted that this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement

with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial Judge and this is so, in view of the decisions rendered by the Hon'ble Supreme Court in the case of GIRJA NANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHAUDHARI, AIR 1967 SC 1124 and STATE OF KARNATAKA V. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417.

30. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the accused. Suffice it

to say that the learned trial Judge has given cogent and convincing reasons for acquitting the accused and the learned A.P.P. has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned Judge.

31. Seen in the above context, we do not find any valid reason or justifiable ground to interfere with the impugned judgment and order acquitting the accused of the offences with which they were charged. Hence, leave to appeal deserves to be refused by dismissing the appeal in limine.

32. For the foregoing reasons, leave to appeal is refused. The appeal is dismissed at the threshold.

(A.M. Kapadia, J.)

(Smt.Abhilasha Kumari,J)

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